



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1994

Ms. Helen M. Gros
Senior Assistant City Attorney
Legal Department
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR94-471

Dear Ms. Gros:

The City of Houston (the "city") received a request for information from the American Performance Showcase Theater (the "theater"). The city has asked if this information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 26061.


The requestor has asked for "receipts of all payments for hall rentals, deposits, and invoices for contracts # 4939, 5434, 5433 and 5430" and a letter that amended one of the contracts between the city and the theater. The requestor also seeks copies of documents, including a fax log, that the theater asserts it provided to the city "during the Man of La Mancha investigation." The city contends that the requested information is excepted from disclosure under section 552.103(a) of the Open Records Act. Section 552.103(a) provides an exception for information that is related to pending or reasonably anticipated litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. In support of its contention that the information is excepted from disclosure under section 552.103(a), the city submitted documents showing that the city has filed suit against the theater over contract numbers 5430 and 5433. The suit alleges that the theater breached the terms of these contracts between the city and the theater.

Although the city has shown that litigation is pending concerning two of the contracts for which information is sought, the requested documents may not be withheld from the theater under section 552.103(a). A review of the invoices, receipts and checks submitted to this office indicates that the theater has previously had access to these documents. If the fax log at issue was submitted by the theater to the city, as the

requestor indicates, then the theater has already had access to the fax log. No section 552.103(a) interest generally exists with respect to information that has been obtained by all parties to anticipated or pending litigation. Open Records Decision No. 349 (1982) at 2. When the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there is no justification for now withholding that information from the requestor pursuant to section 552.103(a). Since the requestor has already had access to the information at issue, the city must release the information to the requestor.¹

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 26061

Enclosures: Submitted documents

cc: Mr. Stephen G. Williams
Executive Director
American Performance Showcase Theater
P.O. Box 301210
Houston, Texas 77230
(w/o enclosures)

¹The city did not submit to this office a letter that amended contract number 5430. The city states that it has been unable to locate the requested letter, but that the section 552.103 exception should apply to this letter. We note, however, that since the requested information was a letter to which the theater had access, no section 552.103(a) interest would exist with respect to that information.